IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 592

AIDEN LASSELL RIPLEY,

Petitioner,

vs.

FINDLAY GALLERIES, INC.,
A CORPORATION,
AND
GOES LITHOGRAPHING COMPANY,
A CORPORATION,

Respondents.

RESPONDENTS' BRIEF IN ANSWER AND IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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AUTHORITIES.

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

INTRODUCTORY STATEMENT.

The petition seeks to have this Court review a decision of the Court of Appeals for the Seventh Circuit (R. 275 to 280, inclusive), which was decided specifically and solely upon the particular facts in this case and without

any ruling upon or adoption or approval of any principle or proposition of law whatsoever. There is, therefore, no reason or ground for granting the writ sought.

The opinion of the Court of Appeals for the Seventh Circuit is reproduced in the record at pages 275 to 280, inclusive, and is reported in 155 F. (2) 955. To facilitate reference thereto the complete opinion of the Court of Appeals is reproduced in and as an "Appendix" to this brief. The oral opinion, Findings of Fact, Conclusions of Law and "Interlocutory Judgment" of the District Court appear in the record at pages 234 to 247, inclusive.

The petitioner (plaintiff below), Aiden Lassell Ripley, is an artist residing in Massachusetts. The respondent (defendant below), Findlay Galleries, Inc., is an Illinois corporation which conducts an art gallery at 338 South Michigan Avenue, Chicago, Illinois. The other respondent (defendant below), Goes Lithographing Company, is an Illinois corporation, and has a place of business located in Chicago, Illinois, where it is engaged in commercial lithography.

The case below was an action for alleged infringement by the respondents of both common law and statutory copyright claimed by the petitioner in a water color painted by him and entitled "Three Grouse in Snow" (Complaint, R. 2 to 7, inclusive). The case was tried in the United States District Court for the Northern District of Illinois, Eastern Division, at Chicago, before Judge Philip L. Sullivan, and arose over the allegedly unauthorized sale of the original water color or painting "Three Grouse in Snow" by the respondent, Findlay Galleries, Inc., to the respondent, Goes Lithographing Company, for reproduction by the latter company in copies for sale. The District Court held that this sale of the painting by Findlay to Goes for reproduction in copies

for sale was unauthorized and entered an "Interlocutory Judgment" (R. 246, 247) granting the petitioner-artist, Ripley, the relief sought in the complaint including an injunction against further reproduction and an accounting. Both respondents (defendants) thereupon took an appeal to the Court of Appeals for the Seventh Circuit which held that the sale of the painting by Findlay to Goes for reproduction in copies for sale was expressly authorized by the petitioner-artist, Ripley. For this reason the Court of Appeals in a unanimous decision (Opinion, R. 275 to 280, inclusive) reversed the judgment of the District Court and remanded the case to that Court for further proceedings consistent with the opinion of the Court of Appeals.

The petitioner-artist, Ripley, thereupon filed in the Court of Appeals a Petition for Rehearing (R. 283 to 304, inclusive) but this Petition for Rehearing was denied by the Court of Appeals (R. 327). The Mandate to the District Court thereupon issued (R. 327) and has not been stayed or recalled.

While, as pointed out above, this action was for alleged infringement of both common law and statutory copyright claimed by the petitioner-artist in the painting or water color "Three Grouse in Snow", the entire case below turned upon the issue of whether or not the respondent-defendant, Findlay Galleries, Inc., was authorized by the petitioner-artist, Ripley, as his agent, to sell the painting in suit to the respondent, Goes Lithographing Company, for reproduction by the latter company in copies for sale. This issue, as the Court of Appeals correctly held in its opinion, turned upon the agent's authority as solicited in a letter of March 14, 1942 (Plaintiff's Exhibit No. 5, R. 173) from the agent (the respondent, Findlay Galleries, Inc.) to the petitioner-artist, Ripley, requesting authorization to sell for reproduction one of the artist's paintings

then in the possession of the agent for sale, and a reply letter dated March 16, 1942 (Plaintiff's Exhibit No. 6, R. 175) from the petitioner-artist, Ripley, to his agent, the respondent, Findlay Galleries, Inc., granting the agent express authority to sell for reproduction one of the petitioner's paintings then in the possession of his agent for sale. Both of these letters are reproduced in full (R. 276) and are fully discussed in the opinion of the Court of Appeals (R. 275 to 280, inclusive). In so holding the Court of Appeals stated (last paragraph of Opinion, R. 279, 280):

> "There being no substantial dispute in the evidence, we are constrained to hold that the lower court has placed an erroneous interpretation on the two letters in question. Holding as we do that the entire matter turns upon the authority to the agent and that the letters constitute complete authority to Findlay for the sale without reservation, it follows that if plaintiff had any common law copyright it passed under the sale and the subsequent application for a statutory copyright was made by plaintiff under a misconception of his rights and is invalid. Under the circumstances we think plaintiff's complaint is without merit."

In thus basing its decision solely upon the authority of the agent, Findlay, to sell the painting to Goes for reproduction in copies for sale, as authorized by the letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) the Court of Appeals expressly stated that it was unnecessary for it to pass or rule upon other questions and points of law raised by the parties in the trial court and in their briefs on appeal. Thus the Court of Appeals stated in its opinion (R. 279):

> "Neither do we need to consider the important case of *Pushman* v. *New York Graphic Society,* 39 N. E. (2) 249, 287 N. Y. 302, or the many other authorities on the question of whether in selling or authorizing the sale

> of a picture without reservation the reproduction rights are included; or, conversely, whether the reproduction rights follow the sale unless expressly reserved by the artist. There are respectable authorities upon both sides of this much argued and briefed question, *but it becomes unimportant in our case, because of our holding of express authority for an unrestricted sale. Neither is the question of custom among artists important in our case for custom, whatever it be, must yield to express authority.*"

It will thus be seen that the decision of the Court of Appeals was based solely and entirely upon the facts of this case, and including the two letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175), and does not adopt, follow or approve any principle of copyright law, or of the law of agency, or of any other branch of the law. This being so, the only apparent reason why the petitioner is here seeking a review by this Court is that he is, of course, dissatisfied with the decision of the Court of Appeals.

In an attempt to obtain a review by this Court the petitioner now reargues the facts and the merits of his case which were fully and completely argued in his brief before the Court of Appeals, at oral argument in that Court, and in his petition for rehearing following the decision of the Court of Appeals. Having failed to impress the Court of Appeals with the merits of his case, the petitioner in his petition and in his brief in support thereof in this Court now attempts to read into the purely factual decision of the Court of Appeals numerous thin and transparent charges that in thus resting its decision solely and entirely upon the agent's authority to sell the painting in suit for reproduction, in copies for sale, as authorized by the two letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) the Court of Appeals

fell into error both in the law of copyrights and in the law of agency as alleged in Paragraphs 1 to 3, inclusive, of page 14 of the Petition for Certiorari under the heading entitled "Reasons Relied On For The Allowance of the Writ." These charges are entirely without merit in view of the fact the Court of Appeals in its opinion specifically refrained from making any ruling whatsoever upon any principle or proposition of law, as pointed out in the foregoing quotation from the Court's opinion (R. 279).

Furthermore, the Court of Appeals in its opinion carefully reviewed all of the significant facts in this case and quoted in full the two controlling facts of the case on which it based its decision, namely, the two letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) authorizing the petitioner's agent, the respondent, Findlay Galleries, Inc., to sell the painting in suit to the respondent, Goes Lithographing Company, for reproduction in copies for sale.

The only other and remaining reason or ground relied upon in support of the petition is that which is set forth in Paragraph 4 on page 14 of the petition under the heading "Reasons Relied on For the Allowance of the Writ." As this alleged ground for allowance of the writ the petitioner contends that this case is one of public interest and importance. However, this contention is entirely without merit because a case of less public interest and importance would seldom be brought to this Court's attention. This is for the reason that the conclusion of the Court of Appeals that the petitioner's agent, the respondent, Findlay Galleries, Inc., was authorized to sell the painting in suit to the respondent, Goes Lithographing Company, by the two letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) is a purely factual matter which is of interest to the present litigants

only and is of no general public interest or importance, whatsoever.

It is apparent, therefore, that the four grounds recited in Paragraphs 1 to 4, inclusive, of page 14 of the petition, under the heading "Reasons Relied On For the Allowance of the Writ" fail to set forth any reason why this Court should review the purely factual decision of the Court of Appeals and grant the writ sought in and by the petition.

SUMMARY OF ARGUMENT.

I.

The case below was an action for alleged infringement of both common law and statutory copyright claimed by the petitioner-artist, Ripley, upon a painting or water color entitled "Three Grouse in Snow" the original of which was sold by the respondent, Findlay Galleries, Inc., as agent for the petitioner, to the respondent, Goes Lithographing Company, which reproduced the painting in copies for sale. The charge of infringement arose out of this sale and the reproduction and sale of copies of the painting. The Court of Appeals for the Seventh Circuit in its opinion (R. 275 to 280, inclusive) held that this sale of the painting by the respondent, Findlay Galleries, Inc., to the respondent, Goes Lithographing Company, and the reproduction and sale of copies thereof by the latter company, were fully authorized by the petitioner-artist, Ripley, by a letter of March 14, 1942 (Plaintiff's Exhibit No. 5, R. 173) from the agent, the respondent, Findlay Galleries, Inc., to its principal, the petitioner-artist, Ripley, requesting express authorization to sell for reproduction one of his paintings then in the possession of his agent for sale but unsold, and by a reply letter of March 16, 1942 (Plaintiff's Exhibit No. 6, R. 175) from the principal, the petitioner-artist, Ripley, granting the authority solicited by the agent to sell for reproduction one of his paintings then in the possession of his agent for sale but unsold.

II.

The decision of the Court of Appeals for the Seventh Circuit is based solely and entirely upon the specific facts which were involved in and are applicable solely and only to the case below and does not rule upon any principle or proposition of the law of copyrights or of the law of agency or of any other branch of the law. The first three grounds relied upon by the petitioner, as set forth in Paragraphs 1 to 3, inclusive, on page 14 of the petition, under the heading "Reasons Relied on For the Allowance of the Writ", are, therefore, without merit.

III.

Since the decision of the Court of Appeals (R. 275 to 280, inclusive) was based entirely upon the fact finding that the petitioner's agent, the respondent, Findlay Galleries, Inc., was authorized by the letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) to sell the painting in suit to the respondent, Goes Lithographing Company, for reproduction in copies for sale, there is and can be no possible conflict whatsoever between the decision of the Court of Appeals and any decision of this Court or the decision of any lower federal court or any state court.

IV.

The Court of Appeals in its opinion (R. 275 to 280, inclusive, at page 279) specifically held that in view of the fact finding that the petitioner's agent, the respondent, Findlay Galleries, Inc., was authorized by the letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) to sell the painting in suit to the respondent, Goes Lithographing Company, for reproduc-

tion in copies for sale it was unnecessary for the Court to rule upon, and the Court therefore declined to rule upon, any of the principles of the law of copyrights and of the law of agency which the parties had raised in their briefs before the Court of Appeals and which the Petitioner now seeks to have reviewed by this Court, in the abstract.

V.

The case below, having been decided upon specific facts which are peculiarly and specifically applicable solely and only thereto, and not to any other case, is one of purely private interest and is of no general public interest or importance whatever. The fourth and last ground relied upon in support of the petition, as set forth in Paragraph 4 on page 14 of the petition, under the heading "Reasons Relied On For the Allowance of the Writ", is, therefore, without merit.

VI.

Most of the petition and the brief in support thereof are concerned, not in establishing any reason or reasons why this court should grant the writ of certiorari prayed for, but in a reargument of the merits of the case below. It is not the purpose of the writ of certiorari here prayed for to give the petitioner, dissatisfied with the decision of the Court of Appeals below, another chance to reargue the merits of his case in this court.

POINTS AND AUTHORITIES.

I.

The decision of the Court of Appeals for the Seventh Circuit was a purely factual decision involving the authority of the petitioner's agent to sell the painting in suit for reproduction in copies for sale and contains no ruling upon any principle or proposition of law whatsoever. The petition, therefore, attempts to bring before this Court for review the purely factual matter of the authority of the petitioner's agent to sell the painting in suit for reproduction and hence is without merit. No reason, therefore, exists for the issuance of the writ of certiorari prayed for in the petition.

Caroline M. Forsyth v. *City of Hammond, et al.*, 166 U. S. 506, 514, 515, 41 L. Ed. 1095, 1098, 1099.

General Talking Pictures Corporation v. *Western Electric Company, et al.*, 304 U. S. 175, 178, 82 L. Ed. 1273, 1275.

Southern Power Co. v. *North Carolina Public Service Co.*, 263 U. S. 508, 509, 68 L. Ed. 413, 44 S. Ct. 164.

United States v. *Johnston*, 268 U. S. 220, 227, 69 L. Ed. 925, 926, 45 S. Ct. 496.

II.

There is and can be no possible conflict of decisions between or among the Court of Appeals for the Seventh Circuit and any other court as to the purely factual matter of the authority of the petitioner's agent to sell the painting in suit for reproduction in copies for sale since this

purely factual issue has never been and is not now involved in any other litigation. There is, therefore, no reason or ground for the issuance of the writ of certiorari prayed for in the petition.

Sec. 240a of the Judicial Code, as amended (U. S. C. A. Title 28, Sec. 347).

Rule 38, Par. 5, Secs. a, b and c of the Rules of the Supreme Court of the United States, as amended, May 26, 1941.

Caroline M. Forsyth v. *City of Hammond, et al.*, 166 U. S. 506, 514, 515, 41 L. Ed. 1095, 1098, 1099.

III.

The authority of the petitioner's agent to sell the painting in suit for reproduction in copies for sale is a matter of purely private interest to the parties to the present case and in no way decides or affects any principle or proposition of the law of copyrights or of the law of agency. Hence the present case is of purely private interest to the parties hereto and is of no general or public importance, whatsoever.

Rule 38, Par. 5, Secs. a, b and c of the Rules of the Supreme Court of the United States, as amended, May 26, 1941.

Caroline M. Forsyth v. *City of Hammond, et al.*, 166 U. S. 506, 514, 515, 41 L. Ed. 1095, 1098, 1099.

Layne and Bowler Corporation v. *Western Well Works, Inc., et al.*, 261 U. S. 387, 393, 67 L. Ed. 712, 714.

ARGUMENT.

I.

The action below was an action for alleged infringement by the respondents of the petitioner's claimed so-called common law rights in, and of a statutory copyright claimed by the petitioner upon, a painting or so-called water color of his own creation entitled "Three Grouse in Snow."

The petitioner, Aiden Lassell Ripley, is an artist residing in Massachusetts. The respondent, Findlay Galleries, Inc., is an Illinois corporation and conducts an art gallery at 338 South Michigan Avenue, Chicago, Illinois. The respondent, Goes Lithographing Company, is also an Illinois corporation, and has a place of business located at 42 West 61st Street, Chicago, Illinois, where it is engaged in commercial lithography.

An "Interlocutory Judgment" entered by the District Judge on June 1, 1945 (R. 246, 247) granted the petitioner an injunction and awarded him an accounting in an action for the alleged infringement of copyright on his painting or so-called water color entitled "Three Grouse in Snow." A reproduction of this water color appears in the record at page 7.

On January 26, 1942 the original water color "Three Grouse in Snow" was consigned and shipped by the petitioner, Ripley, to his agent, the respondent, Findlay Galleries, Inc., for sale, along with ten other pictures. The selling price of the painting to the purchaser was agreed upon as three hundred dollars ($300.00) of which the respondent-agent, Findlay Galleries, Inc., was to retain one third or one hundred dollars ($100.00) as its commission

for selling the painting. The balance of two hundred dollars ($200.00) was to be remitted to the petitioner-artist, Ripley (Finding of Fact No. 6, R. 236). This sum of two hundred dollars ($200.00) was paid to the petitioner-artist, Ripley, by Walstein C. Findlay, Jr., president of the respondent corporation, Findlay Galleries, Inc. (Findings of Fact Nos. 24 and 25, R. 240, 241), and cancelled checks (Plaintiff's Exhibits Nos. 23, 25, 26 and 27, R. 201, 205). It has been retained by the petitioner at all times since then.

Nothing was stated by the petitioner-artist, Ripley, at the time of consignment or delivery of the painting to his agent, the respondent, Findlay Galleries, Inc., in writing or otherwise, as to the reproduction rights in the painting (Finding of Fact No. 7, R. 236, 237).

The painting did not attract a purchaser who might wish to hang it in his home. The respondent, Findlay Galleries, Inc., thereupon wrote the petitioner-artist on March 14, 1942 (Plaintiff's Exhibit No. 5, R. 173) advising that it had been unable to find a purchaser for the painting and inquiring as to whether or not the petitioner-artist, Ripley, would be interested in selling any of his paintings or water colors for commercial reproduction. The petitioner replied that he had no objection to selling one of his paintings or water colors for reproduction. (Letter of March 16, 1942, Plaintiff's Exhibit No. 6, R. 175.)

Thereafter, namely, on or about April 6, 1942, the respondent, Findlay Galleries, Inc., sold the painting in suit, without reservation, to the respondent, Goes Lithographing Company, which made and sold a large number of lithographic reproductions of the painting.

The controversy below arose out of this sale of the painting or water color "Three Grouse in Snow" by the respondent, Findlay Galleries, Inc., to the respondent, Goes

Lithographing Company, and the subsequent making and selling of reproductions of the water color by the respondent, Goes Lithographing Company. The petitioner contended that this sale of the painting to, and its reproduction by, the respondent, Goes Lithographing Company, were unauthorized, whereas both respondents contended in the trial court and in the Court of Appeals that this sale of the painting and its reproduction were fully authorized by the petitioner. The District Judge held for the petitioner-artist (plaintiff), namely, that this sale of the painting in suit and its reproduction were unauthorized. However, the Court of Appeals reversed the District Judge and held in its opinion (R. 275 to 280) that this sale of the painting and its reproduction were fully authorized by the petitioner-artist, Ripley, by the letters of March 14 and March 16, 1942 (Plaintiff's Exhibit Nos. 5 and 6, R. 173, 175).

In so holding and in reversing the District Judge, the Court of Appeals stated as follows in its opinion (Last Paragraph of Opinion, R. 279, 280):

> "There being no substantial dispute in the evidence, we are constrained to hold that the lower court has placed an erroneous interpretation on the two letters in question. Holding as we do that the entire matter turns upon the authority to the agent and that the letters constitute complete authority to Findlay for the sale without reservation, it follows that if plaintiff had any common law copyright it passed under the sale and the subsequent application for a statutory copyright was made by plaintiff under a misconception of his rights and is invalid. Under the circumstances, we think plaintiff's complaint is without merit."

Approximately a year and six months after the painting in suit had been sold by the respondent, Findlay Galleries, Inc., and after a large number of reproductions of the

painting in suit had been made and sold by the respondent, Goes Lithographing Company, the petitioner-artist, Ripley, on or about September 25, 1943, filed in the office of the Register of Copyrights an application to register a claim to a statutory copyright on the painting in suit as an alleged "unpublished work of art" and a certificate of registration was issued thereon in due course (Plaintiff's Exhibit No. 39, R. 217).

The complaint charged infringement by both respondents of the petitioner's asserted common law rights in the water color "Three Grouse in Snow" as well as infringement of the petitioner's claimed statutory copyright on this water color as an alleged unpublished work of art. However, as stated in the foregoing quotation from its opinion, the Court of Appeals held (R. 280) that

> "* * * if plaintiff had any common law copyright it passed under the sale and the subsequent application for a statutory copyright was made by plaintiff under a misconception of his rights and is invalid".

II.

The decision of the Court of Appeals for the Seventh Circuit is based solely and entirely upon the specific facts which were involved in the action below and the Court's opinion does not rule upon or approve or follow any principle or proposition of the law of copyrights or of the law of agency, or any other branch of the law. Thus it will be seen that the decision of the Court of Appeals was based solely and entirely upon the purely factual point of an agent's authority to sell a chattel, namely, the painting in suit, for reproduction. This is a purely factual matter and affords nothing for this Court to review.

The first three reasons relied upon by the petitioner in support of the petition, and as set forth in Paragraphs 1

to 3, inclusive, on page 14 of the petition, under the heading "Reasons Relied on For the Allowance of the Writ", are, therefore, without merit. This is because these reasons allege errors of law in the opinion of the Court of Appeals which do not exist therein and can not possibly exist therein because the purely factual decision of the Court of Appeals is entirely devoid of any ruling upon any principle of law, whatsoever.

It is well established that under circumstances such as are presented by the facts of the action below no ground exists for the allowance of the writ. Thus, in the case of *Caroline M. Forsyth* v. *City of Hammond, et al.*, 166 U. S. 506 (41 L. Ed. 1095, 1098, 1099) this Court in reiterating a policy with respect to granting certiorari, even then long established, said, at pages 514 and 515:

> "* * * it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a state, or some matter affecting the interests of this nation in its internal or external relations, demands such exercise."

In the case of *General Talking Pictures Corporation* v. *Western Electric Company, et al.*, 304 U. S. 175, 82 L. Ed. 1273, this Court stated as follows at page 178 (1275):

> "There is nothing in the lower courts' decision on either of the added questions to warrant review here. Whether respondents acquiesced in the infringement and are estopped *depends upon the facts. Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it. Southern Power Co.* v. *North Carolina Pub. Serv. Co.*, 263 U. S. 508, 68 L. Ed. 413, 44 S. Ct. 164; *United States* v. *Johnston*, 268 U. S. 220, 227, 69 L. Ed. 925, 926, 45 S. Ct. 496."

Similarly, in the case of *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508, 68 L. Ed. 413, 44 S. Ct. 164, this Court stated at page 509:

> "This writ must be dismissed. The petition therefor stated that the cause involved a grave question of vital importance to the public, and alleged as special reason for its re-examination that the decree would deprive petitioner of property without due process of law, and of freedom to contract, contrary to the Federal Constitution. The opinion below is reported in 33 A. L. R. 626, 282 Fed. 837.
>
> "The argument developed that the controverted question was whether the evidence sufficed to establish actual dedication of petitioner's property to public use,—*primarily a question of fact. That is not the ground upon which we granted the petition*, and, if sufficiently developed, would not have moved us thereto."

III.

The purely factual issue of the agent's authority to sell the painting in suit for reproduction in copies for sale has never been, and is not now, involved in any other litigation among the parties. Hence there has never been and is not now any conflict of authority between the decision of the Court of Appeals for the Seventh Circuit and the decision of any other lower federal court or any state court which would justify review of the facts of this case by this Court. This is particularly true in view of the fact that the Court of Appeals in its opinion expressly held that since its decision was based entirely upon the petitioner's authorization to his agent to sell the painting in suit for reproduction, as evidenced by the two letters of March 14 and March 16, 1942 (Plaintiff's Exhibits Nos. 5 and 6, R. 173, 175) it was unnecessary for the Court to review or pass upon any of the points of law raised by the parties in the trial court and in the Court of Appeals.

Thus the Court of Appeals in its opinion stated as follows (R. 279):

> "Neither do we need to consider the important case of *Pushman* v. *New York Graphic Society,* 39 N. E. (2) 249, 287 N. Y. 302, or the many other authorities on the question of whether in selling or authorizing the sale of a picture without reservation the reproduction rights are included; or, conversely, whether the reproduction rights follow the sale unless expressly reserved by the artist. There are respectable authorities upon both sides of this much argued and briefed question, but it becomes unimportant in our case, because of our holding of express authority for an unrestricted sale. Neither is the question of custom among artists important in our case for custom, whatever it be, must yield to express authority."

Under these circumstances it has long been the law in this Court that the petition presents no basis or ground for the allowance of the writ prayed for.

Sec. 240a of the Judicial Code, as amended, U. S. C. A. Title 28, Sec. 347; Rule 38, Par. 5, Secs. a, b and c of the Rules of the Supreme Court of the United States, as amended, May 26, 1941; *Caroline M. Forsyth* v. *City of Hammond, et al.,* 166 U. S. 506, 514, 515, 41 L. Ed. 1095, 1098, 1099; *Layne and Bowler Corporation* v. *Western Well Works, Inc., et al.,* 261 U. S. 387, 393, 67 L. Ed. 712, 714.

IV.

The action below was decided by the Court of Appeals for the Seventh Circuit upon a matter of purely private interest to the litigants, namely, the agent's authority to sell the painting in suit for reproduction in copies for sale. This is a matter of purely private interest to the parties to the present litigation and in no way affects or disturbs the existing law of copyrights or the existing law of agency

and is of no general or public interest or importance whatsoever.

The fourth and last ground relied upon by the petitioner in support of the petition, as set forth in Paragraph 4 on page 14 of the petition, under the heading "Reasons Relied on For the Allowance of the Writ", is without merit. This is so because the "reason" referred to attempts to impart to the action below the dignity of great public interest and importance which is entirely absent in fact.

It has long been held that under these circumstances this Court will not grant the writ of certiorari prayed for by the petitioner.

Thus, in the case of *Layne and Bowler Corporation* v. *Western Well Works, Inc., et al.*, 261 U. S. 387, 67 L. Ed. 712, 714, this Court said, at page 393:

> "* * * it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of *importance to the public as distinguished from that of the parties*, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. The present case certainly comes under neither head."

(Also Rule 38, Par. 5, Secs. a, b and c of the Rules of the Supreme Court of the United States, as amended, May 26, 1941; and *Caroline M. Forsyth* v. *City of Hammond, et al.*, 166 U. S. 506, 514, 515, 41 L. Ed. 1095, 1098, 1099.)

V.

Most of the petition and the brief in support thereof are devoted to a reargument of the petitioner's case which was thoroughly briefed and argued by petitioner's counsel in the Court of Appeals. It is not the purpose of the writ of certiorari here prayed for to give the petitioner, dissatisfied with the decision of the Court of Appeals below, another chance to reargue the merits of his case in this Court. This is a principle so fundamental and so long established in this Court that it no longer requires the citation of authority to support it.

It is, therefore, deemed unnecessary to answer herein the numerous arguments advanced by the petitioner in his petition and brief as to the alleged merits of his action.

Conclusion.

For the reasons stated, and under the authorities cited, it is submitted that:

(1) The purely factual decision of the Court of Appeals (containing no ruling upon any principle or proposition of the law of copyrights or of the law of agency, or of any other branch of the law, and applicable only to the specific facts of this case) was, and should be, final;

(2) The petition fails to establish any reason why this Court should grant the writ of certiorari for which the petitioner prays and review this case merely because the petitioner is dissatisfied with the decision of the Court of Appeals;

(3) The four reasons relied upon by the petitioner in support of the petition, as recited in Paragraphs 1 to 4, inclusive, on page 14 of the petition, under the heading

"Reasons Relied on For Allowance of the Writ", are without merit; and

(4) The petition should, therefore, be denied.

Respectfully submitted,

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Dated: October 24, 1946.

(All Italics Added.)